

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SOUND VIEW INNOVATIONS, LLC,

Plaintiff,

v.

HULU, INC.

Defendant.

Case No. 2:17-cv-04146-JAK-PLA

AMENDED STIPULATED
PROTECTIVE ORDER

[Discovery Document: Referred to
Magistrate Judge Paul L. Abrams]

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge that this Stipulated Protective Order does not entitle them to file
12 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
13 that must be followed and the standards that will be applied when a party seeks
14 permission from the court to file material under seal.

15 2. GOOD CAUSE STATEMENT

16 This action is likely to involve information about sensitive products and/or
17 services, proprietary design and development materials of products and/or services,
18 source code, strategic decision-making information, marketing and sales
19 information, and/or proprietary information for which special protection from public
20 disclosure and dissemination and from use for any purpose other than prosecution of
21 this action is warranted. Such confidential and proprietary materials and information
22 consist of, among other things, confidential business or financial information,
23 information regarding confidential business practices, or other confidential research,
24 development, or commercial information (including information implicating
25 confidentiality and privacy rights of third parties), information otherwise generally
26 unavailable to the public, or which may be privileged or otherwise protected from
27 disclosure under state or federal statutes, court rules, case decisions, or common
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1 law. Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately
3 protect information the parties are entitled to keep confidential, to ensure that the
4 parties are permitted reasonable necessary uses of such material in preparation for
5 and in the conduct of trial, to address their handling at the end of the litigation, and
6 serve the ends of justice, a protective order for such information is justified in this
7 matter. It is the intent of the parties that information will not be designated as
8 confidential for tactical reasons and that nothing be so designated without a good
9 faith belief that it has been maintained in a confidential, non-public manner, and
10 there is good cause why it should not be part of the public record of this case.

11 3. DEFINITIONS

12 3.1 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 3.2 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c).

17 3.3 Counsel (without qualifier): Outside Counsel of Record and House
18 Counsel (as well as their support staff).

19 3.4 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

23 3.5 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

1 3.6 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who (1) has been retained by a Party or its Counsel to
3 serve as an expert witness or as a consultant in this action, (2) is not a current
4 employee of a Party or of a Party's competitor, and (3) at the time of retention, is
5 not anticipated to become an employee of a Party or of a Party's competitor.

6 3.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 Information or Items: extremely sensitive “Confidential Information or Items,”
8 disclosure of which to another Party or Non-Party would create a substantial risk of
9 serious harm that could not be avoided by less restrictive means.

10 3.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
11 Items: extremely sensitive “Confidential Information or Items” representing
12 computer code and associated comments and revision histories, formulas,
13 engineering specifications, or schematics that define or otherwise describe in detail
14 the algorithms or structure of software or hardware designs, disclosure of which to
15 another Party or Non-Party would create a substantial risk of serious harm that could
16 not be avoided by less restrictive means.

17 3.9 House Counsel: attorneys who are employees of a party to this action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 3.10 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 3.11 Outside Counsel of Record: attorneys who are not employees of a party
23 to this action but are retained to represent or advise a party to this action and have
24 appeared in this action on behalf of that party or are employed by a law firm which
25 has appeared on behalf of that party. By agreement, John Desmarais or any other
26 Desmarais LLP employee that has worked or is working in a business capacity for
27 Plaintiff will not have access to any information that Facebook designates as
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1 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

3 3.12 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 3.13 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

8 3.14 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 3.15 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE
15 CODE.”

16 3.16 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18 3.17 Related Case: any case (or cases) in which Sound View has or does in
19 the future allege infringement of any patent against any company besides Hulu, Inc.,
20 including but not limited to *Sound View Innovations, LLC v. Facebook, Inc.*, No.
21 2:17-cv-04275-JAK (PLAx) (C.D. Cal.) and *Sound View Innovations, LLC v.*
22 *Facebook, Inc.*, No. 16-116-RGA (D. Del.)).

23 4. SCOPE

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (1) any information copied or
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or
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1 presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the
3 following information: (a) any information that is in the public domain at the time of
4 disclosure to a Receiving Party or becomes part of the public domain after its
5 disclosure to a Receiving Party as a result of publication not involving a violation of
6 this Order, including becoming part of the public record through trial or otherwise;
7 and (b) any information known to the Receiving Party prior to the disclosure or
8 obtained by the Receiving Party after the disclosure from a source who obtained the
9 information lawfully and under no obligation of confidentiality to the Designating
10 Party. To be clear, unsubstantiated media speculations or rumors do not transform
11 information obtained from Protected Material concerning the subject matter of the
12 speculations or rumors into “public domain” information. Such information is
13 explicitly included in the definition of “Protected Material” set forth in 2.15 above.
14 Any use of Protected Material at trial shall be governed by a separate agreement or
15 order.

16 5. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs. Final disposition shall be
20 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
21 or without prejudice; and (2) final judgment herein after the completion and
22 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
23 including the time limits for filing any motions or applications for extension of time
24 pursuant to applicable law.

25 6. DESIGNATING PROTECTED MATERIAL

26 6.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under
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1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. To the extent it is practical to do so, the
3 Designating Party must designate for protection only those parts of material,
4 documents, items, or oral or written communications that qualify – so that other
5 portions of the material, documents, items, or communications for which protection
6 is not warranted are not swept unjustifiably within the ambit of this Order.

7 If it comes to a Designating Party's attention that information or items that it
8 designated for protection do not qualify for protection at all or do not qualify for the
9 level of protection initially asserted, that Designating Party must promptly notify all
10 other parties that it is withdrawing the mistaken designation.

11 6.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
13 that qualifies for protection under this Order must be clearly so designated before
14 the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
20 CONFIDENTIAL – SOURCE CODE" to each page that contains Protected
21 Material.

22 (b) for testimony given in deposition or other pretrial or trial
23 proceedings that the Designating Party identify on the record or up to 21 days
24 afterwards if that period is properly invoked, that the transcript shall be treated as
25 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
26 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE."

1 Parties shall give the other parties notice if they reasonably expect a deposition or
2 other pretrial or trial proceeding to include Protected Material so that the other
3 parties can ensure that only authorized individuals who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
5 proceedings. The use of a document as an exhibit at a deposition or other pretrial or
6 trial proceedings shall not in any way affect its designation as “CONFIDENTIAL”
7 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE.”

9 Transcripts containing Protected Material shall have an obvious legend on the title
10 page that the transcript contains Protected Material, and the title page shall be
11 followed by a list of all pages that have been designated as Protected Material and
12 the level of protection being asserted by the Designating Party. The Designating
13 Party shall inform the court reporter of these requirements. Any transcript that is
14 prepared before the expiration of a 21-day period for designation shall be treated
15 during that period as if it had been designated “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” in its entirety. After the expiration of that period or
17 as of such earlier time that such transcript is designated, the transcript shall be
18 treated only as actually designated.

19 (c) for information produced in some form other than documentary
20 and for any other tangible items, that the Producing Party affix in a prominent place
21 on the exterior of the container or containers in which the information or item is
22 stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
24 CODE.” If only a portion or portions of the information or item warrant protection,
25 the Producing Party, to the extent practicable, shall identify the protected portion(s)
26 and specify the level of protection being asserted.

1 6.3 Inadvertent Failures to Designate. An inadvertent failure to designate
2 qualified information or items does not waive the Designating Party's right to secure
3 protection under this Order for such material. Upon correction of a designation, the
4 Receiving Party must make all reasonable efforts to assure that the material is
5 treated in accordance with the provisions of this Order.

6 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time that is consistent with the Court's
9 Scheduling Order. Unless a prompt challenge to a Designating Party's
10 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
11 unnecessary economic burdens, or a significant disruption or delay of the litigation,
12 a Party does not waive its right to challenge a confidentiality designation by electing
13 not to mount a challenge promptly after the original designation is disclosed.

14 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process pursuant to Local Rule 37-1, et seq., by providing a letter
16 requesting a pre-filing conference of counsel that lists each designation the
17 Challenging Party is challenging and describing the basis for each challenge. To
18 avoid ambiguity as to whether a challenge has been made, the letter must recite that
19 the challenge to confidentiality is being made in accordance with this specific
20 paragraph of the Protective Order. The parties shall attempt to resolve each
21 challenge in good faith pursuant to Local Rule 37-1, et seq. In conferring, the
22 Challenging Party must explain the basis for its belief that the confidentiality
23 designation was not proper and must give the Designating Party an opportunity to
24 review the designated material, to reconsider the circumstances, and, if no change in
25 designation is offered, to explain the basis for the chosen designation. A
26 Challenging Party may proceed to the next stage of the challenge process only if it
27 has engaged in this meet and confer process first or establishes that the Designating
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1 Party is unwilling to participate in the meet and confer process in a timely manner as
2 set forth in Local Rule 37-1. Any discovery motion must strictly comply with the
3 procedures set forth in Local Rules 37-1, 37-2, and 37-3.

4 7.3 Burden. The burden of persuasion in any such challenge proceeding
5 shall be on the Designating Party. Frivolous challenges and those made for an
6 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
7 other parties) may expose the Challenging Party to sanctions. Unless the
8 Designating Party has waived the confidentiality designation, all parties shall
9 continue to afford the material in question the level of protection to which it is
10 entitled under the Producing Party's designation until the Court rules on the
11 challenge.

12 8. ACCESS TO AND USE OF PROTECTED MATERIAL

13 8.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this
15 case only for prosecuting, defending, or attempting to settle this litigation. Such
16 Protected Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. Any Protected Material produced by Hulu, Inc.
18 shall not be disclosed by Sound View to outside litigation counsel of record in any
19 Related Case who is not also outside counsel of record for Sound View in this action
20 without Hulu, Inc.'s express written consent. When the litigation has been
21 terminated, a Receiving Party must comply with the provisions of section 15 below
22 (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location
24 and in a secure manner that ensures that access is limited to the persons authorized
25 under this Order.

26 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the Court or permitted in writing by the Designating Party, a
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1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

3 (a) the Receiving Party’s Outside Counsel of Record in this action,
4 as well as employees of said Outside Counsel of Record to whom it is reasonably
5 necessary to disclose the information for this litigation. Outside Counsel of Record
6 for Hulu may also exchange or provide access to CONFIDENTIAL (and HIGHLY
7 CONFIDENTIAL - ATTORNEYS’ EYES ONLY) information received from
8 Sound View with Outside Counsel of Record for a defendant in a Related Case,
9 subject to said Outside Counsel of Record for defendant in the Related Case treating
10 such information in accordance with the terms of this and any other applicable
11 Order. For avoidance of doubt, unless otherwise agreed in writing, no outside
12 counsel for Sound View in any Related Cases who is not also outside counsel of
13 record for Sound View in this action shall have access to Protected Information
14 produced by Hulu to Sound View¹;

15 (b) the officers, directors, and employees (including House Counsel)
16 of the Receiving Party to whom disclosure is reasonably necessary for this litigation
17 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
18 A);

19 (c) Experts (as defined in this Order) of the Receiving Party to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) the Court and its personnel;
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25 ¹ This provision does not apply to documents produced in response to a subpoena served by a
26 defendant in any Related Cases on another defendant in the Related Case or on Hulu, Inc.
27 Nothing herein is intended to permit or require any defendant in any Related Case to conduct,
28 receive, or participate in party discovery from Hulu, Inc. or another defendant in any Related Case.

1 (e) court reporters and their staff, professional jury or trial
2 consultants including mock jurors who have signed a confidentiality agreement, and
3 Professional Vendors to whom disclosure is reasonably necessary for this litigation
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
5 A);

6 (f) during their depositions, witnesses in the action to whom
7 disclosure is reasonably necessary, with the consent of the Designating Party or as
8 ordered by the Court. Pages of transcribed deposition testimony or exhibits to
9 depositions that reveal Protected Material must be separately bound by the court
10 reporter and may not be disclosed to anyone except as permitted under this
11 Stipulated Protective Order;

12 (g) the author or recipient of a document containing the information
13 or a custodian or other person who otherwise possessed or knew the information.

14 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
16 Items. Unless otherwise ordered by the Court or permitted in writing by the
17 Designating Party, a Receiving Party may disclose any information or item
18 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
19 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

20 (a) the individuals identified in Section 8.2(a) of this Order;

21 (b) Experts of the Receiving Party (1) to whom disclosure is
22 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment
23 and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set
24 forth in paragraph 8.4(a), below, have been followed;

25 (c) the Court and its personnel;

26 (d) court reporters and their staff, professional jury or trial
27 consultants including mock jurors who have signed a confidentiality agreement, and
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1 Professional Vendors to whom disclosure is reasonably necessary for this litigation
2 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A), except that mock jurors shall not be given access to material designated
4 “HIGHLY CONFIDENTIAL – SOURCE CODE”; and

5 (e) the author or recipient of a document containing the information
6 or a custodian or other person who otherwise possessed or knew the information.

7 8.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
8 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
9 – SOURCE CODE” Information or Items to Experts.

10 (a) Unless otherwise ordered by the Court or agreed to in writing by
11 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
12 Order) any information or item that has been designated “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
14 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 8.3(b) first must make
15 a written request to the Designating Party that (1) identifies the general categories of
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
17 CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks
18 permission to disclose to the Expert, (2) sets forth the full name of the Expert and
19 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
20 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each
21 person or entity from whom the Expert has received compensation or funding for
22 work in his or her areas of expertise or to whom the Expert has provided
23 professional services, including in connection with a litigation, at any time during
24 the preceding five years and the party to the litigation for whom such work was
25 done, (6) identifies (by name and number of the case, filing date, and location of
26 court) any litigation in connection with which the Expert has offered expert
27 testimony, including through a declaration, report, or testimony at a deposition or
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1 trial, during the preceding five years, and (7) identifies any patents or patent
2 applications in which the Expert is identified as an inventor or applicant, is involved
3 in prosecuting or maintaining, or has any pecuniary interest. With regard to the
4 information sought through part (5) of this disclosure, if the Expert believes any of
5 this information is subject to a confidentiality obligation to a third party, then the
6 Expert should provide whatever information the Expert believes can be disclosed
7 without violating any confidentiality agreements, and the Party seeking to disclose
8 to the Expert shall be available to meet and confer with the Designating Party
9 regarding any such engagement.

10 (b) A Party that makes a request and provides the information
11 specified in the preceding respective paragraphs may disclose the subject Protected
12 Material to the identified Expert unless, within 7 days of delivering the request, the
13 Party receives a written objection from the Designating Party. Any such objection
14 must set forth in detail the grounds on which it is based.

15 (c) All challenges to objections from the Designating Party shall
16 proceed under Local Rule 37-1 through Local Rule 37-4.

17 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
18 burden of proving that the risk of harm that the disclosure would entail (under the
19 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
20 Material to its Expert.

21 9. PROSECUTION BAR

22 Absent written consent from the Producing Party, any individual bound by
23 this agreement who receives access to "HIGHLY CONFIDENTIAL –
24 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
25 CODE" information shall not be involved in the prosecution of patents or patent
26 applications relating to the subject matter of the patents-in-suit as well as the subject
27 matter of the Protected Information received, including without limitation the
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1 patents asserted in this action and any patent or application claiming priority to or
2 otherwise related to the patents asserted in this action, before any foreign or
3 domestic agency, including the United States Patent and Trademark Office (“the
4 Patent Office”). For purposes of this paragraph, “prosecution” includes directly or
5 indirectly drafting, amending, advising, or otherwise affecting the scope or
6 maintenance of patent claims. Prosecution includes, for example, original
7 prosecution, reissue, and reexamination and other post-grant proceedings. The
8 Parties expressly agree that the prosecution bar set forth herein shall be personal to
9 any Party’s Outside Counsel, in-house attorneys, or their respective employed staff
10 who reviews or otherwise learns the content of HIGHLY CONFIDENTIAL —
11 ATTORNEYS’ EYES ONLY or HIGHLY CONFIDENTIAL — SOURCE CODE
12 information. It is expressly agreed that Outside Counsel and their employed staff
13 who work on these matters without reviewing or otherwise learning the content of
14 HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY or HIGHLY
15 CONFIDENTIAL — SOURCE CODE material shall not be restricted from
16 engaging in prosecution activity on other matters that fall within the prosecution bar.
17 It is also expressly agreed that in-house attorneys and their employed staff who
18 work on these matters without reviewing or otherwise learning the content of
19 HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY or HIGHLY
20 CONFIDENTIAL — SOURCE CODE information shall not be restricted from
21 engaging in prosecution activity on other matters that fall within the prosecution bar.

22 Notwithstanding the foregoing, nothing herein shall prevent an attorney from
23 representing a party in a proceeding that challenges a patent-in-suit before a
24 domestic or foreign agency (including, but not limited to, a reissue protest, ex parte
25 reexamination, inter partes reexamination, post grant review, or inter partes review)
26 unless the attorney is involved in directly or indirectly drafting, amending, advising,
27 or otherwise affecting the scope of patent claims on behalf of a patent owner. This
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1 Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
3 CODE” information is first received by the affected individual and shall end two (2)
4 years after final termination of this action.

5 10. SOURCE CODE

6 (a) To the extent production of source code becomes necessary in
7 this case, a Producing Party may designate source code as “HIGHLY
8 CONFIDENTIAL - SOURCE CODE” if it comprises extremely sensitive
9 “Confidential Information or Items” representing computer code and associated
10 comments and revision histories, formulas, engineering specifications, or schematics
11 that define or otherwise describe in detail the algorithms or structure of software or
12 hardware designs, disclosure of which to another Party or Non-Party would create a
13 substantial risk of serious harm that could not be avoided by less restrictive means.

14 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
15 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information including the
17 Prosecution Bar set forth in Paragraph 9, and may be disclosed only to the
18 individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 information may be disclosed, as set forth in Paragraphs 8.3 and 8.4.

20 (c) Any source code produced in discovery shall be made available
21 for inspection, in a format allowing it to be reasonably reviewed and searched,
22 during normal business hours (9:00 a.m. to 6:00 pm local time) or at other mutually
23 agreeable times, at an office of the Producing Party’s Counsel or another mutually
24 agreed upon location. To the extent access is necessary outside of normal business
25 hours, the parties agree to cooperate in good faith and make reasonable efforts to
26 accommodate reasonable requests for access outside of normal business hours. The
27 computer containing source code will be made available upon reasonable notice to
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1 the Producing Party, which shall not be less than three (3) business days in advance
2 of the requested inspection. The source code shall be made available for inspection
3 on two secured computers in a secured room without Internet access or network
4 access to other computers (“Source Code Computers”), and the Receiving Party
5 shall not copy, remove, or otherwise transfer any portion of the source code onto
6 any recordable media or recordable device. The Source Code Computers will be
7 accessible using a working keyboard, mouse, and two monitors. The Producing
8 Party shall install such tools or programs necessary to review and search the code
9 produced on the platform produced. At a minimum these software utilities must
10 provide the ability to (a) view, search, and line-number any source code file, (b)
11 search for a given pattern of text through a number of files, (c) compare two files
12 and display their differences, (d) print to PDF a source code file (or excerpt thereof)
13 with the file path and original line numbers displayed in the PDF, and (e) compute
14 the MD5 checksum of a file. The Receiving Party’s Outside Counsel and/or experts
15 may request, at the Receiving Party’s expense, that other commercially available
16 licensed software tools for viewing and searching source code be installed on the
17 secured computers. The Receiving Party’s Outside Counsel and/or experts shall be
18 entitled to take notes relating to the source code but may not copy the source code
19 into the notes. Though an expert may not copy lines of code into their notes, an
20 expert's notes may include words from the code (e.g., definitions, function names,
21 variable names, constants, string literals, and comments) and the expert’s analysis of
22 the operation of the source code. The Producing Party may not monitor or record via
23 any electronic means the activities of the Receiving Party’s representatives during
24 any Source Code review. The Producing Party may visually monitor the activities of
25 the Receiving Party’s representatives during any source code review, but only to
26 ensure that there is no unauthorized recording, copying, or transmission of the
27 source code. All persons viewing Source Code shall sign on each day they view
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1 Source Code a log that will include the names of persons who enter the secured
2 room to view the Source Code and when they enter and depart.

3 (d) The Receiving Party may request paper copies of limited
4 portions of source code that are reasonably necessary to attach to filings, pleadings,
5 expert reports, or other papers, or for use as an exhibit at deposition or trial, but shall
6 not request paper copies for the purposes of reviewing the source code other than
7 electronically as set forth in paragraph (c) in the first instance. Using the software
8 available on the Source Code Computers, the Receiving Party shall create PDFs of
9 the printed copies the Receiving Party is requesting and save them in a folder on the
10 desktop named "Print Requests" with a subfolder identifying the date of the request.
11 The request for printed Source Code shall be served via an email request identifying
12 the subfolders of the "Print Requests" folder that the Receiving Party is requesting.
13 Within three (3) business days of such request, the Producing Party shall either: (i)
14 send one copy set of such pages to the Receiving Party for next day delivery; or (ii)
15 inform the Receiving Party that it objects that the printed portions are excessive
16 and/or not done for a permitted purpose. If the request is served after 6:00pm Pacific
17 Time, it shall be deemed served the following business day. All such source code
18 shall be provided on non-copyable paper including bates numbers and the label
19 "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may
20 challenge the amount of source code requested in hard copy form pursuant to the
21 dispute resolution procedure and timeframes set forth in Paragraph 7 whereby the
22 Producing Party is the "Challenging Party" and the Receiving Party is the
23 "Designating Party" for purposes of dispute resolution.

24 (e) The Receiving Party shall maintain a log of all paper copies of
25 the Source Code. The log shall include the names of the reviewers and/or recipients
26 of paper copies and locations where the paper copies are stored. Upon three (3)
27 day's advance notice to the Receiving Party by the Producing Party, the Receiving
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1 Party shall provide a copy of this log to the Producing Party. The Receiving Party
2 shall maintain all paper copies of any printed portions of the source code in a
3 secured, locked area. The Receiving Party shall not create any electronic or other
4 images of the paper copies and shall not convert any of the information contained in
5 the paper copies into any electronic format. The Receiving Party may only request
6 additional paper copies if such additional copies are (1) necessary to attach to court
7 filings, pleadings, or other papers (including a testifying Expert's expert report), (2)
8 necessary for deposition, or (3) necessary for trial. The Receiving Party shall not
9 request paper copies for the purposes of reviewing the source code other than
10 electronically as set forth in paragraph (c) in the first instance. To the extent a
11 deposition is likely to involve source code, the Party taking the deposition, shall
12 provide at least seven (7) days written notice of that fact, and the Producing Party
13 will make a source code computer available at the deposition, minimizing the need
14 for additional paper copies of source code. Any paper copies used during a
15 deposition shall be retrieved by the Producing Party at the end of each day and must
16 not be given to or left with a court reporter or any other individual.

17 11. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

19 11.1 If a Party is served with a subpoena or a court order issued in other
20 litigation that compels disclosure of any information or items designated in this
21 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
22 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party
23 must:

24 (a) promptly notify in writing the Designating Party. Such
25 notification shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or
27 order to issue in the other litigation that some or all of the material covered by the
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1 subpoena or order is subject to this Protective Order. Such notification shall include
2 a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 (d) If the Designating Party timely seeks a protective order, the Party
6 served with the subpoena or court order shall not produce any information
7 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
9 CODE” before a determination by the Court from which the subpoena or order
10 issued, unless the Party has obtained the Designating Party’s permission. The
11 Designating Party shall bear the burden and expense of seeking protection in that
12 court of its confidential material – and nothing in these provisions should be
13 construed as authorizing or encouraging a Receiving Party in this action to disobey a
14 lawful directive from another court.

15 11.2 The provisions set forth herein are not intended to, and do not, restrict
16 in any way the procedures set forth in Federal Rule of Civil Procedure 45(d)(3) or
17 (f).

18 12. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
19 PRODUCED IN THIS LITIGATION

20 (a) The terms of this Order are applicable to information produced
21 by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
23 CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties
24 in connection with this litigation is protected by the remedies and relief provided by
25 this Order. Nothing in these provisions should be construed as prohibiting a Non-
26 Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request,
2 to produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 1. promptly notify in writing the Requesting Party that some
6 or all of the information requested is subject to a confidentiality agreement with a
7 Non-Party;

8 2. promptly provide the Non-Party with a copy of the
9 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a
10 reasonably specific description of the information requested, and inform the Non-
11 Party that it has fourteen (14) days to object to the information being provided to the
12 Requesting Party; and

13 3. make the information requested available for inspection by
14 the Non-Party.

15 (c) If the Non-Party fails to object or seek a protective order from
16 this Court within fourteen (14) days of receiving the notice and accompanying
17 information, the Receiving Party may produce the Non-Party's confidential
18 information responsive to the discovery request. If the Non-Party timely seeks a
19 protective order, the Producing Party shall not produce any information in its
20 possession or control that is subject to the confidentiality agreement with the Non-
21 Party before a determination by the Court.

22 13. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
26 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
27 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
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persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

14. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privilege or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding. A Producing Party may assert privilege or protection over produced documents at any time by notifying the Receiving Party in writing of the assertion of privilege or protection. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

15. MISCELLANEOUS

15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

15.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 15.3 Export Control. The Protected Material disclosed by the Producing
2 Party may contain technical data subject to export control laws and therefore the
3 release of such technical data to foreign persons or nationals in the United States or
4 elsewhere may be restricted. The Receiving Party shall take measures necessary to
5 ensure compliance with applicable export control laws, including confirming that no
6 unauthorized foreign person has access to such technical data.

7 No Protected Material may leave the territorial boundaries of the United States of
8 America. Without limitation, this prohibition extends to Protected Information
9 (including copies) in physical and electronic form. The viewing of Protected
10 Information through electronic means outside the territorial limits of the United
11 States of America is similarly prohibited. The restrictions contained within this
12 paragraph may be amended through the express written consent of the Producing
13 Party to the extent that such agreed to procedures conform with applicable export
14 control laws and regulations. Nothing in this paragraph is intended to remove any
15 obligation that may otherwise exist to produce documents currently located in a
16 foreign country.

17 15.4 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected
20 Material, but rather must seek to file under seal any Protected Material in
21 compliance with Local Rule 79. **Good cause must be shown for the under seal**
22 **filing.**

23 15.5 Privilege Logs. No Party is required to identify on its respective
24 privilege log any document or communication dated after the filing of the
25 Complaint. The parties shall exchange their respective privilege logs at a time to be
26 agreed upon by the parties following the production of documents, or as otherwise
27 ordered by the Court.

1 15.6 Other Proceedings. By entering this order and limiting the disclosure of
2 information in this case, the Court does not intend to preclude another court from
3 finding that information may be relevant and subject to disclosure in another case.
4 Any person or Party subject to this order who becomes subject to a motion to
5 disclose another Party's information designated as confidential pursuant to this order
6 shall promptly notify that Party of the motion so that the Party may have an
7 opportunity to appear and be heard on whether that information should be disclosed.

8 16. FINAL DISPOSITION

9 Within 60 days after the final disposition of this action, as defined in
10 paragraph 5, each Receiving Party must return all Protected Material to the
11 Producing Party or destroy such material. As used in this subdivision, "all Protected
12 Material" includes all copies, abstracts, compilations, summaries, and any other
13 format reproducing or capturing any of the Protected Material. Whether the
14 Protected Material is returned or destroyed, the Receiving Party must submit a
15 written certification to the Producing Party (and, if not the same person or entity, to
16 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
17 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
18 that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or any other format reproducing or capturing any of the Protected
20 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
21 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
22 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
23 work product, and consultant and Expert work product, even if such materials
24 contain Protected Material. Any such archival copies that contain or constitute
25 Protected Material remain subject to this Protective Order as set forth in Section 5
26 (DURATION).

ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

Paul L. Abrams

Dated: January 3, 2018

Hon. Paul L. Abrams
UNITED STATES MAGISTRATE JUDGE

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RUSS AUGUST & KABAT

Dated: January 3, 2018

By: /s/ Kent N. Shum

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